## Exhibit 12



# engadget

Engadget

### With "pod" on lockdown, Apple goes after "podcast"

Posted Sep 24th 2006 7:15PM by Evan Blass

Filed under: Portable Audio

Now

### o podcastready

#### lawyers

have scared the pants off of small entrepreneurs selling products like the Profit Pod and TightPod -- items that have nothing to with portable audio in any way, mind you -it seems that the next targets are companies that have the audacity to use the word "podcast" in their names. Wired's Listening Post blog is reporting that Steve's legal eagles have sent one of those scary cease and desist letters to a company called Podcast Ready, whose premier product, myPodder, gives users an automated way to download 'casts to their portable devices. CEO Russel

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Hands-on with iriver's 3-inch touchscreen phor

i-mate officially adds 8502, 9502 to Ultimate lir

Holliman claims that he'd consider changing the name of the program if necessary, but seems to be justifiably reticent about rebranding his entire business, considering the fact that "podcast" may not be "owned" by Apple nor even a derivative of "iPod" in the first place. Robert Scoble -whose own company, PodTech, may be at risk in this witch hunt -- has weighed in on the issue by suggesting that the tech community as a whole adopt other terms like "audiocast" and "videocast" (or alternately, "audcast" and "vidcast") to describe this type of content, while other folks feel that fighting Apple and generating a ton of negative press for Cupertino is the best solution. Our take? Apple should be happy that its golden goose is getting so much free publicity, and if it isn't, we know of several companies that probably wouldn't mind if zencast, zunecast, or sansacast became the preferred terminology.

Update: BBHub's own Russell Shaw delves into this issue a little further over at ZDnet, and finds that Apple is having trouble getting certain iPodrelated phrases trademarked, including the word "iPodcasting."

Read- Apple's nastygram

engadgeth

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Motorola lifted by sales of HD set-top boxes, n mention of shortages

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Tags: apple, cease and desist, CeaseAndDesist, copyright, infringement, ipod, mypodder, podcast, podcast ready, PodcastReady, trademark

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   (28 days ago - 215 Comments)
- The \$20 iPod touch upgrade: really for legal reasons or no? (22 days ago - 168 Comments)
- iPod touch users: if you bought after Jan 1 the new apps are free -- maybe (26 days ago - 169 Comments)
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crypt @ Sep 24th 2006 7:28PM

Perhaps that

band called P.O.D. may have to change their name awell... I think this is stupid, how far will Apple go in trademarketing.... perhaps they should just do a search for "\*pod\*" and trademark every instance .... /sarcasm

I could go on but I wont, I'll just look on in anger...

Reply

#### Highest Ranked







Joshua Ballard @ Sep 24th 2006 8:46PM

Dude, P.O.D. was out before the iPod was, you're looking at this the wrong way. P.O.D. should sue apple for using their band name in a music related product.



craig



herlihy

@ Sep 26th 2006 12:31PM

Next they'll be going after anything with an "i" in front of it: iHome, iGrip, iSkin, iCarPlay, iTrip, etc. etc.



Veutral Jeff



@ Sep 24th 2006 7:29PM

Apple may or may not have a legal leg to stand on here. But come on, let's be honest. None

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of these companies would be using the word "podcast" were it not for the iPod. This is not a word that was invented out of thin air. It was invented because of the iPod.

That doesn't mean Apple has a legal right to keep others from using the term (although they might), but it is at least disingenuous to suggest that ""podcast" may not be "owned" by Apple nor even a derivative of "iPod" in the first place."
That's just BS. It is totally, 100% a derivative of "iPod".

Reply

Highly Ranked





Silver R. Wolfe @ Sep 24th 2006 7:37PM

While I agree

the term podcast became popular because of the iPod, it doesn't mean that they own the rights to the word.

I think it's ridiculous that Apple would go to such lengths to own the word "pod". Next they'll be sending a cease and desist to the Jolly Green Giant for selling pea pods.

Reply

Highest Ranked





Xiath @ Sep 24th 2006 7:41PM

I'm just waiting

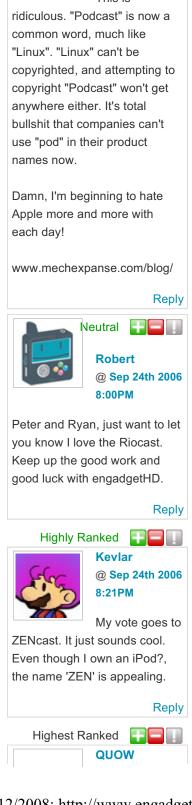
for Apple to sue PODS, you know those giant metal crates you use as a second garrage. What is it "Portable On Demand Storage" or something like that. Any way Apple will be all "You store stuff in PODS just like you store MUSIC in iPods,

they stole the idea from us. Give me money." Reply Neutral **Chris** @ Sep 24th 2006 7:43PM ROFL, we're on the same wavelength, see my post about the same time...heh... Highest Ranked Chris @ Sep 24th 2006 7:42PM Have they attacked PODS storage thingies yet? http://www.pods.com/ Reply Neutral Mike **Talmadge** @ Sep 25th 2006 9:15AM Different market, no issue. Highly Ranked Rob @ Sep 24th 2006 7:51PM

@ Sep 24th 2006
7:51PM

This is the one
area in which I find Apple (or
Steve Jobs) to be utterly
asinine. Maybe he suffers from
OCD. I say, forget going after
"podcast" Steve, go all the way.
I suggest you should go for the
letters p, o, and d and have
them copyrighted so that
absolutely no one will ever be
able to make the mistake of
using "pod" again. I'm serius,
withut thse letters t use, ele
[people] will sn [soon] realise
the almighty wer [power] of

Steve Jbs. Lve yur cmuters by the way. Reply Highest Ranked kerunt @ Sep 24th 2006 7:54PM This is ridiculous. "Podcast" is now a common word, much like "Linux". "Linux" can't be copyrighted, and attempting to copyright "Podcast" won't get anywhere either. It's total bullshit that companies can't use "pod" in their product names now. Damn, I'm beginning to hate Apple more and more with each day! www.mechexpanse.com/blog/ Neutral





#### @ Sep 24th 2006 8:23PM

And people make fun of Microsoft for going trademark/patent crazy...

Reply





Cade @ Sep 24th 2006 8:26PM

Maybe the

should just sue pea for taking the name peapods.

Reply

#### Highest Ranked





Ryan F. @ Sep 24th 2006 8:26PM

Has Apple lost

it? Now I guess they will be sueing:

P.O.D.S

P.O.D

proporta.com/F02/PPF02P05.php? t\_id=342&t\_mode=des pod.ie/ line6.com/products/pods/ podrestaurant.com

So, you wanna go for them too? Apple, anyone can use the word "pod" in their product name! The word has been around LONG before the iPod! Wanna check the definition? Here:

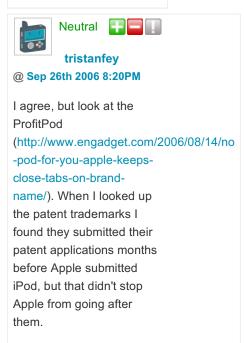
#### http://www.podrestaurant.com/

Now please stop this madness. I love my iPod but I hate the way you are trying to bully innocent people around over the word pod, even if their product doesnt have to do with





Dude. Just becasue you dont like howo a company runs thier buisness, doesnt mean all thier products suck. If everyone thought like you millions of people would be out of jobs. Your hatred is blinding you. At least state reasons to why you hate Apple.





On the one hand, I understand that a company has an interest and legal right to protect its branding. Also, I do see a real potential for misunderstanding about the brand name around the term "podcast"... unlike "Monster" and Monster Cable's aggressive brand related litigation, which is I think totally, totally ridiculous.

On the other, I think it's interesting that Podcasts were first driven by the enthusiast community, then Apple picked up the term by officially putting it into iTunes, thus benefiting from the popularity in the community, and now are interested in assuming "ownership" over that term. They are being relatively circumscribed so far about cease and desist orders so far, but we'll see how it develops.

Reply



I've been a Mac user for 13 years and have owned every iPod since the beginning. I'm a big "fanboy" for Apple, yet this is really starting to piss me off. Unless Apple has some supersecret thing up their sleeve, or they're just being retarded. I can't imagine ANYONE at Apple thinking this is a good idea.

Fishes, narco.





While I do agree it's out of hand, I kind of think maybe people should switch to something more generic like audiocast and videocast.

Podcast doesn't really describe what it is you're getting (audio or video?) and becasue of it's

name it promotes one product too much, the iPod, when there are other products out there that can play them too.

Previous to listening to podcasts I too thought they were exclusive to only iTunes and iPods. So I think the word "Podcast" can confuse people into thinking it is just an Apple thing.

#### Reply



#### soopergooman @ Sep 24th 2006 9:29PM

Peas come in POD's, so do Dolphins, is Steveo gonna sue them also? I have never bought or used an Apple product and I never will.

YOU SUCK STEVE JOBS!!!!
Get a life dude!!!!

#### Reply



The only problem with the public switching terminolgy now is that most people know iTunes to be the premiere place to search and download podcasts. As long as Apple calls them podcasts and the majority of the people go to iTunes for them, they pretty much own the word anyway. The only way it'll start to change is when other sites start popping up. Not sure if the Zune marketplace has a "zunecast" section, but if/when

they do, I think people will start going elsewhere and Apple will probably pull back a bit.

Fishes, narco.

Reply



**UFGrayMatter** @ Sep 24th 2006 9:35PM

Can I flle a

class action suit in the name of Mother Nature. I believe the PeaPod came just a couple thousand centuries before iPod.

Reply



I am just gonna wait for the day Jobs starts going after random word combination that resemble the same syntactical layout as iPod, (like CNET for example).

As for P.O.D. suing, they won't lift a finger cuz because they don't have to. If Apple goes after that band, as long as its been in the game, not only will you have Atlantic Records coming after them, as well as the RIAA for trying to step on toes over intellectual property and copyrights...Jobs ain't that big, no matter what that greedy unoriginal bastard thinks.

Reply

Highly Ranked Bill @ Sep 24th 2006 9:52PM



Why didn't Apple do this earlier?

The timing smells very fishy-take all the hard work of those
who spread the popularity of
podcasts when it's an "open
source" term, get everyone
hooked onto downloading them
thorugh iTunes, and then once
it's nice and popular, try to grab
the word back (whereas if they
had done it sooner, it wouldn't
have gained the same notoriety
as it has).

Shame on you Apple.

With decisions to persue awkward cases such as this coming in ever more frequently from Apple's legal team, Apple's not just pissing off its hardcore customers--it's also undoubtedly pissing off its most creative and talented employees. Without the heart and soul of its must ardent supporters, it's just a white box.

Good thing Google is right up the road.







Fortyseven @ Sep 24th 2006 9:57PM

What would

this guy think?

http://img147.imageshack.us/img147/7075/vgh7tgg2.jpg

Reply



MONEY MONEY MONEY!!!!
SUE SUE SUE!!!!

It's everyone, none of them are innocent (and yet I keep paying them!).

Reply



Thank God we have Apple over the evil and sadistic Microsoft.

/Sarcastic=0

Seriously though. Most of my music on my iPod is not DRMed. I'm seriously thinking of taking my money elsewhere. This kind of behavior is what I expect out of Microsoft not Apple. That being said I've never been under the assumption that Jobs is anything other then a ruthless businessman and overall an ass.

Reply

#### Highly Ranked



**Chris** Heinzmann @ Sep 24th 2006 10:19PM

This antics are the very reason that I bought SanDisk media players (DRM free) and continue to also use my Sharp Zaurus or Palm Tungsten T with big memory cards to listen to my webcasts. Never will Apple get my money for an iPod. I just got the book iWoz wonder if he will get sued for using the iXXX for his title. Funny how such and grand idea and 'down to earth' company attacks its very own roots.

Reply



glacia00 @ Sep 24th 2006 10:52PM

Please please now is the time to abandon that term you will all be embarassed by in a few years. It needs to be replaced by DAPcast or something more descriptive

Reply





Kris D @ Sep 24th 2006 11:02PM

Sue vegitable companys for Peas in a POD.

Sue Robbin Williams for playing MORK and Arriving on Earth in a POD.

The band P.O.D Might not be to happy they should call their next album P.O.Dcast just for spite.

I might make a mel brook style spoof where salors say AHI AHIpod Captin.

Companys should POD the hell out of products... The carrypod, The MoneyPod (good piggy bank name), maybe comedy Downloads called the FUNNIPODCASTS (cas the word IPOD IN IT).

If Apple can get away with suing or convincing people to drop the name POD from their products 0 then maybe Microsoft should start suing, Anderson, Pella and other Window Companys.

APPLE is acting like every other greedy company these days. I guess their lawyers react without thinking. Really unprofessional if you ask me.

Kris

Reply





11:11PM

While the iPod did help with podcasting, the reason for using POD is not because of the iPod. Podcasting stands for Portable On Demand broadcast thats the whole point of it, it is

Tivo for radio it's portable and it's when I want to listen to it. I am so a Apple fan heck i do my own Apple Podcast but this issue continues to piss me off.

Reply



Isn't Apple jumping on this a little late? They should have been sending out C&D letters from the very first mention.

Their legal department is notorious for being diligent about IP infringement, and any successful defense will be based on Apple turning a blind eye until long after many, many people were already using the term.

Reply



hypocritical of Jobs. They used the name Apple when the Beatles already had a company called Apple. Hell, Jobs even said he named the company as a tribute to them. He lost the suit years ago, but settled and promised that the company would only be used for computers. Now that he won his case after being sued again over basically breaching his settlement, he now feels it's ok to go after people using the term Podcast.

Unfortunately, Apple will do what all corporations do to small companies. Outspend

them. They will cost financial ruin on people defending themselves over use of the name and will probably win by default and not on the merit of the case.

Reply



kerunt @ Sep 24th 2006 11:45PM

Dear

Engadgeters,

We obviously do not have enough power to legally force Jobs & Apple to STFU like they should, but we can do it other ways:

I hearby propose we stop mentioning "iPod" altogether. Let's call it "Apple's Player". As a matter of fact, let's stop using Apple names and cliches altogether.

The \*STUPID\* bond between Apple and it's product names needs to be loosened, seriously loosened.

Ho do these sound?

- Apple's player
- Apple's laptop
- Apple's computer

If enough people (communities, blogs, forums, etc.) do this, it should ensure our favourite Mr.Jobs has some sleepless nights - maybe \_then\_ he will have enough time to think about WTF he is actually doing...

Reply

Neutral



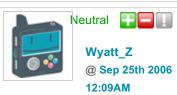


phish @ Sep 25th 2006 12:02AM

correct me if

i'm wrong (which i probably am)... but you can't sue over the use of an acctual "word". i know apple probably has trademarks on the word pod but "podcast" became an official word in websters a while ago..

#### Reply



So, I think Apple knows what it's doing. The iPod is only really as popular as it is because of its rep. As such it is advantageous for Apple to protect something as superficial as its name with all it's might. It may make people angry and makes Apple look stupid but at the same time it really underscores the shallowness of that product.

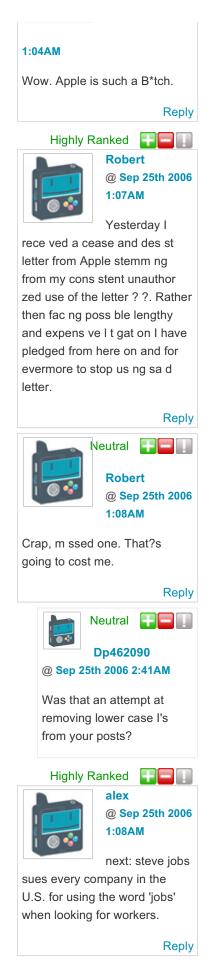
#### Reply



remember this game called P.O.D ??? doesn't work anymore on windows I guess because of drivers, it existed BEFORE Ipod, who ows who royalties in this case ???

#### Reply





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#### Comments

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